

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 118

Introduced by Brandt, 32; Dorn, 30; Hardin, 48; Holdcroft, 36; Ibach, 44;
Lippincott, 34.

Read first time January 06, 2023

Committee:

1 A BILL FOR AN ACT relating to the Nebraska Advantage Rural Development
2 Act; to amend sections 77-27,187.02 and 77-27,188, Revised Statutes
3 Cumulative Supplement, 2022; to change provisions relating to the
4 application fee and qualifying investment amount for a tax credit;
5 and to repeal the original sections.

6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-27,187.02, Revised Statutes Cumulative
2 Supplement, 2022, is amended to read:

3 77-27,187.02 (1) To earn the incentives set forth in the Nebraska
4 Advantage Rural Development Act, the taxpayer shall file an application
5 for an agreement with the Tax Commissioner. There shall be no new
6 applications for incentives filed under this section after December 31,
7 2027.

8 (2) The application shall contain:

9 (a) A written statement describing the full expected employment or
10 type of livestock production and the investment amount for a qualified
11 business, as described in section 77-27,189, in this state;

12 (b) Sufficient documents, plans, and specifications as required by
13 the Tax Commissioner to support the plan and to define a project; and

14 (c) An application fee of (i) one hundred dollars for an investment
15 amount of less than twenty-five thousand dollars, (ii) two hundred fifty
16 dollars for an investment amount of at least twenty-five thousand dollars
17 but less than fifty thousand dollars, and (iii) five hundred dollars for
18 an investment amount of fifty thousand dollars or more. The fee shall be
19 remitted to the State Treasurer for credit to the Nebraska Incentives
20 Fund. The application and all supporting information shall be
21 confidential except for the name of the taxpayer, the location of the
22 project, and the amounts of increased employment or investment.

23 (3)(a) The Tax Commissioner shall approve the application and
24 authorize the total amount of credits expected to be earned as a result
25 of the project if he or she is satisfied that the plan in the application
26 defines a project that (i) meets the requirements established in section
27 77-27,188 and such requirements will be reached within the required time
28 period and (ii) for projects other than livestock modernization or
29 expansion projects, is located in an eligible county, city, or village.

30 (b) For applications filed in calendar year 2015, the Tax
31 Commissioner shall not approve further applications once the expected

1 credits from the approved projects total one million dollars. For
2 applications filed in calendar year 2016 and each year thereafter, the
3 Tax Commissioner shall not approve further applications from applicants
4 described in subsection (1) of section 77-27,188 once the expected
5 credits from approved projects from this category total one million
6 dollars. For applications filed in calendar year 2016 and each year
7 thereafter, the Tax Commissioner shall not approve further applications
8 from applicants described in subsection (2) of section 77-27,188 once the
9 expected credits from approved projects in this category total: For
10 calendar year 2016, five hundred thousand dollars; for calendar years
11 2017 and 2018, seven hundred fifty thousand dollars; for calendar years
12 2019, 2020, and 2021, one million dollars; and for calendar year 2022 and
13 each calendar year thereafter, ten million dollars. Four hundred dollars
14 of the application fee shall be refunded to the applicant if the
15 application is not approved because the expected credits from approved
16 projects exceed such amounts.

17 (c) Applications for benefits shall be considered separately and in
18 the order in which they are received for the categories represented by
19 subsections (1) and (2) of section 77-27,188.

20 (d) Applications shall be filed by November 1 and shall be complete
21 by December 1 of each calendar year. Any application that is filed after
22 November 1 or that is not complete on December 1 shall be considered to
23 be filed during the following calendar year.

24 (4) After approval, the taxpayer and the Tax Commissioner shall
25 enter into a written agreement. The taxpayer shall agree to complete the
26 project, and the Tax Commissioner, on behalf of the State of Nebraska,
27 shall designate the approved plans of the taxpayer as a project and, in
28 consideration of the taxpayer's agreement, agree to allow the taxpayer to
29 use the incentives contained in the Nebraska Advantage Rural Development
30 Act up to the total amount that were authorized by the Tax Commissioner
31 at the time of approval. The application, and all supporting

1 documentation, to the extent approved, shall be considered a part of the
2 agreement. The agreement shall state:

3 (a) The levels of employment and investment required by the act for
4 the project;

5 (b) The time period under the act in which the required level must
6 be met;

7 (c) The documentation the taxpayer will need to supply when claiming
8 an incentive under the act;

9 (d) The date the application was filed; and

10 (e) The maximum amount of credits authorized.

11 Sec. 2. Section 77-27,188, Revised Statutes Cumulative Supplement,
12 2022, is amended to read:

13 77-27,188 (1) A refundable credit against the taxes imposed by the
14 Nebraska Revenue Act of 1967 shall be allowed to any taxpayer who has an
15 approved application pursuant to the Nebraska Advantage Rural Development
16 Act, who is engaged in a qualified business as described in section
17 77-27,189, and who after January 1, 2006:

18 (a)(i) Increases employment by two new equivalent employees and
19 makes an increased investment of at least one hundred twenty-five
20 thousand dollars prior to the end of the first taxable year after the
21 year in which the application was submitted in (A) any county in this
22 state with a population of fewer than fifteen thousand inhabitants,
23 according to the most recent federal decennial census, (B) any village in
24 this state, or (C) any area within the corporate limits of a city of the
25 metropolitan class consisting of one or more contiguous census tracts, as
26 determined by the most recent federal decennial census, which contain a
27 percentage of persons below the poverty line of greater than thirty
28 percent, and all census tracts contiguous to such tract or tracts; or

29 (ii) Increases employment by five new equivalent employees and makes
30 an increased investment of at least two hundred fifty thousand dollars
31 prior to the end of the first taxable year after the year in which the

1 application was submitted in any county in this state with a population
2 of less than twenty-five thousand inhabitants, according to the most
3 recent federal decennial census, or any city of the second class; and

4 (b) Pays a minimum qualifying wage of eight dollars and twenty-five
5 cents per hour to the new equivalent employees for which tax credits are
6 sought under the Nebraska Advantage Rural Development Act. The Department
7 of Revenue shall adjust the minimum qualifying wages required for
8 applications filed after January 1, 2004, and each January 1 thereafter,
9 as follows: The current rural Nebraska average weekly wage shall be
10 divided by the rural Nebraska average weekly wage for 2003; and the
11 result shall be multiplied by the eight dollars and twenty-five cents
12 minimum qualifying wage for 2003 and rounded to the nearest one cent. The
13 amount of increase or decrease in the minimum qualifying wages for any
14 year shall be the cumulative change in the rural Nebraska average weekly
15 wage since 2003. For purposes of this subsection, rural Nebraska average
16 weekly wage means the most recent average weekly wage paid by all
17 employers in all counties with a population of less than twenty-five
18 thousand inhabitants as reported by October 1 by the Department of Labor.

19 For purposes of this section, a teleworker working in Nebraska from
20 his or her residence for a taxpayer shall be considered an employee of
21 the taxpayer, and property of the taxpayer provided to the teleworker
22 working in Nebraska from his or her residence shall be considered an
23 investment. Teleworker includes an individual working on a per-item basis
24 and an independent contractor working for the taxpayer so long as the
25 taxpayer withholds Nebraska income tax from wages or other payments made
26 to such teleworker. For purposes of calculating the number of new
27 equivalent employees when the teleworkers are paid on a per-item basis or
28 are independent contractors, the total wages or payments made to all such
29 new employees during the year shall be divided by the qualifying wage as
30 determined in subdivision (b) of this subsection, with the result divided
31 by two thousand eighty hours.

1 (2) A refundable credit against the taxes imposed by the Nebraska
2 Revenue Act of 1967 shall be allowed to any taxpayer who (a) has an
3 approved application pursuant to the Nebraska Advantage Rural Development
4 Act, (b) is engaged in livestock production, and (c) ~~after January 1,~~
5 ~~2007,~~ invests at least fifty thousand dollars for livestock modernization
6 or expansion for applications filed before January 1, 2024, or at least
7 ten thousand dollars for livestock modernization or expansion for
8 applications filed on or after January 1, 2024.

9 (3) The amount of the credit allowed under subsection (1) of this
10 section shall be three thousand dollars for each new equivalent employee
11 and two thousand seven hundred fifty dollars for each fifty thousand
12 dollars of increased investment. For applications filed before January 1,
13 2016, the amount of the credit allowed under subsection (2) of this
14 section shall be ten percent of the investment, not to exceed a credit of
15 thirty thousand dollars. For applications filed on or after January 1,
16 2016, and before April 20, 2022, the amount of the credit allowed under
17 subsection (2) of this section shall be ten percent of the investment,
18 not to exceed a credit of one hundred fifty thousand dollars per
19 application. For applications filed on or after April 20, 2022, the
20 amount of the credit allowed under subsection (2) of this section shall
21 be ten percent of the investment, not to exceed a credit of five hundred
22 thousand dollars per application. For each application, a taxpayer
23 engaged in livestock production may qualify for a credit under either
24 subsection (1) or (2) of this section, but cannot qualify for more than
25 one credit per application.

26 (4) An employee of a qualified employee leasing company shall be
27 considered to be an employee of the client-lessee for purposes of this
28 section if the employee performs services for the client-lessee. A
29 qualified employee leasing company shall provide the Department of
30 Revenue access to the records of employees leased to the client-lessee.

31 (5) The credit shall not exceed the amounts set out in the

1 application and approved by the Tax Commissioner.

2 (6)(a) If a taxpayer who receives tax credits creates fewer jobs or
3 less investment than required in the project agreement, the taxpayer
4 shall repay the tax credits as provided in this subsection.

5 (b) If less than seventy-five percent of the required jobs in the
6 project agreement are created, one hundred percent of the job creation
7 tax credits shall be repaid. If seventy-five percent or more of the
8 required jobs in the project agreement are created, no repayment of the
9 job creation tax credits is necessary.

10 (c) If less than seventy-five percent of the required investment in
11 the project agreement is created, one hundred percent of the investment
12 tax credits shall be repaid. If seventy-five percent or more of the
13 required investment in the project agreement is created, no repayment of
14 the investment tax credits is necessary.

15 (7) For taxpayers who submitted applications for benefits under the
16 Nebraska Advantage Rural Development Act before January 1, 2006,
17 subsection (1) of this section, as such subsection existed immediately
18 prior to such date, shall continue to apply to such taxpayers. The
19 changes made by Laws 2005, LB 312, shall not preclude a taxpayer from
20 receiving the tax incentives earned prior to January 1, 2006.

21 Sec. 3. Original sections 77-27,187.02 and 77-27,188, Revised
22 Statutes Cumulative Supplement, 2022, are repealed.